IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. SHYLOH GORTAT, Defendant.	MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION FOR RETURN OF SEIZED STIMULUS FUNDS Case No. 2:19-CR-00028-DAK Judge Dale A. Kimball

This matter is before the court on Defendant Shyloh Gortat's ("Gortat") Motion for Return of Seized Stimulus Funds, which he filed pro se in the form of a letter to the court on October 21, 2021. The United States of America ("United States") has filed its response. The court concludes that further briefing or a hearing on the motion would not significantly aid in its determination of the matter. Accordingly, the court enters the following order based on the materials submitted by the parties and the law and facts relevant to the motion.

DISCUSSION

Gortat is an inmate who was released to a halfway house on June 30, 2021. Gortat alleges that the U.S. Attorney's Office for the District of Utah illegally confiscated his $1200.00 stimulus check from the IRS, that was initially mailed to his mother and then returned because his mother had "no way" to cash it at the time. When Gortat learned that he may be eligible for these stimulus funds, Gortat sent "a lost or stolen check trace form" to the IRS so that the IRS could reissue his payment. Then, upon instruction from the IRS, he filed a tax return claiming the Recovery Rebate Credit. After waiting six months for the funds, Gortat received notice that the

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U.S. Attorney's Office had offset his payment for restitution. Gortat now alleges that the IRS instruction that he claim a Recovery Rebate Credit was "tricky" and also that his refund was illegally offset to pay restitution.

The IRS's instruction to Gortat that he claim a Recovery Rebate Credit in his tax return in order to receive his stimulus money was proper. The IRS provides this instruction on its public webpage for all filers. (ECF No. 61 at 2). Filers who claim their stimulus check was lost or stolen need to request a payment trace to permit the IRS to determine whether the check was cashed. *Id*. The IRS does not reissue those checks but, instead, requires that the filer claim the Recovery Rebate Credit. *Id*. This credit is then included in the filer's 2020 tax refund – it is not issued separately. *Id*. The IRS also clarifies that while the Recovery Rebate Credit "will no longer be applied to past due federal income tax debts," the credit remains subject to offsets for debts other than federal income tax debt. *Id*.

Gortat's refund was not offset to satisfy outstanding federal income tax debt. (ECF No. 61 at 3). Gortat was convicted in the 2008 criminal case, *United States v. Gortat*, 2:08-CR-00432-DB, and ordered to pay restitution. This restitution remains outstanding and has been independently referred to the Treasury Offset Program. (ECF No. 61 at 3). The offset of Gortat's stimulus funds was applied toward the outstanding restitution owed in this 2008 case. *Id*. This offset is legal and proper since Gortat owes this money, the offset was not applied to federal income tax debt, and the 2020 Recovery Rebate Credit can be reduced to pay restitution order debts. *See Recovery Rebate Credit – Topic E: Receiving the Credit*, IRS, https://www.irs.gov/newsroom/recovery-rebate-credit-topic-e-receiving-the-credit. Additionally, this offset is required by the special conditions of Gortat's supervision in this case, ECF No. 28 at 5, which say that Gortat is required to "be placed on the Statefinder and Treasury Offset
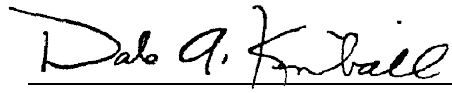
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programs, requiring any state and federal tax refunds be intercepted for purposes of Court-ordered financial obligations." Therefore, the handling of Gortat's stimulus funds was legal and Gortat does not have a right to have the funds returned to him.

CONCLUSION

Based on the above reasoning, Gortat's Motion for Return of Seized Stimulus Funds is DENIED.

DATED this 23rd day of November, 2021.

BY THE COURT:

DALE A. KIMBALL
United States District Judge